

APPEAL NO. 170017  
FILED FEBRUARY 15, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 1, 2016, and continued on May 18, 2016, and concluded on November 29, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), extends to right shoulder supraspinatus and infraspinatus partial tears; (2) the compensable injury of (date of injury), does not extend to L1-2 disc herniation with mild stenosis, L3-4 disc bulge, L4-5 stenosis, L4-5 annular tear, L4-5 disc bulge, L5-S1 posterior disc bulge, or recurrent right shoulder supraspinatus and infraspinatus partial tears; (3) the appellant (claimant) reached maximum medical improvement (MMI) on October 9, 2013; and (4) the claimant's impairment rating (IR) is one percent.

The claimant appealed, disputing the hearing officer's determinations of MMI and IR as well as that portion of the extent-of-injury determination that is not favorable to him. The claimant contends that the hearing officer's decision was contrary to the preponderance of the medical evidence and was in error because the designated doctor's opinion on the extent of the injury and MMI and IR was not adopted. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

That portion of the hearing officer's determination that the compensable injury of (date of injury), extends to right shoulder supraspinatus and infraspinatus partial tears was not appealed and has become final pursuant to Section 410.169.

**DECISION**

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), at least in the form of a lumbar strain and right shoulder contusion/strain and that the Texas Department of Insurance, Division of Workers' Compensation (Division) properly appointed (Dr. T) as designated doctor to address MMI, IR, and extent of injury. The claimant testified that he was injured when he slipped and fell backwards and a tire weighing about 60 pounds struck him in the chest.

**EXTENT OF INJURY**

That portion of the hearing officer's determination that the compensable injury of (date of injury), does not extend to L1-2 disc herniation with mild stenosis, L3-4 disc bulge, L4-5 stenosis, L4-5 annular tear, L4-5 disc bulge, L5-S1 posterior disc bulge, or recurrent right shoulder supraspinatus and infraspinatus partial tears is supported by sufficient evidence and is affirmed.

## **MMI**

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary. The hearing officer found that the preponderance of the other medical evidence is contrary to Dr. T's certifications concerning MMI and IR.

(Dr. H), a carrier-selected required medical examination doctor, examined the claimant on May 10, 2016, and provided multiple certifications of MMI and IR. Dr. H certified that the claimant reached MMI on November 21, 2014, with a one percent IR considering strain injuries to the lumbar spine and right shoulder, as well as contusion to the right shoulder, and partial tears of the supraspinatus and infraspinatus tendon.

Dr. H provided alternate certifications. Dr. H certified that the claimant reached MMI on October 9, 2013, with a zero percent IR considering only the lumbar strain, right shoulder strain, and right shoulder contusion. This certification did not consider the entire compensable injury. Dr. H provided two other alternate certifications in which he certified that the claimant reached MMI statutorily on June 28, 2015, and assessed a one percent and six percent IR respectively. However, both of these alternate certifications consider conditions which have been determined not to be part of the compensable injury and cannot be adopted.

The hearing officer found that Dr. H examined the claimant on May 10, 2016, and certified that the claimant reached MMI on October 9, 2013, with a one percent IR for the compensable injury. However, there is not a certification in evidence from Dr. H or any other doctor that assigns a date of MMI of October 9, 2013, and assigns a one percent IR. The hearing officer determined that the certification from Dr. H that considered the compensable injury (strain injuries to the lumbar spine and right shoulder, as well as contusion to the right shoulder, and partial tears of the supraspinatus and infraspinatus tendon) is supported by the preponderance of the evidence. However, the hearing officer mistakenly listed the date of MMI for that certification as October 9, 2013, rather than the date of November 21, 2014.

Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on October 9, 2013, and render a new decision that the claimant reached MMI on November 21, 2014, to conform to the evidence.

### **IR**

The hearing officer's determination that the claimant's IR is one percent is supported by sufficient evidence and is affirmed.

### **SUMMARY**

We affirm that portion of the hearing officer's determination that the compensable injury of (date of injury), does not extend to L1-2 disc herniation with mild stenosis, L3-4 disc bulge, L4-5 stenosis, L4-5 annular tear, L4-5 disc bulge, L5-S1 posterior disc bulge, or recurrent right shoulder supraspinatus and infraspinatus partial tears.

We affirm the hearing officer's determination that the claimant's IR is one percent.

We reverse the hearing officer's determination that the claimant reached MMI on October 9, 2013, and render a new decision that the claimant reached MMI on November 21, 2014, to conform to the evidence.

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3232.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge